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**MORRISON & FOERSTER LLP**

Attorneys at Law  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

**FAX RECEIVED****JUL - 6 2001****PETITIONS OFFICE**

**To: Office of Petitions  
U.S. Patent and Trademark Office  
Washington, DC**

**Facsimile: (703) 308-6916  
Telephone: (703) 305-9282**

**From: Stephen C. Durant**

**Date: July 6, 2001**

We are transmitting a total of **24** pages (including this page).  
Original or hard copy to follow if this box is marked ☐.

**If you do not receive all pages, please call 415-268-6904 as soon as possible.**

**Preparer of this slip has confirmed that facsimile number given is correct.**

This facsimile contains confidential information which may also be privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute it. If you have received it in error, please advise Morrison & Foerster LLP immediately by telephone or facsimile and return it promptly by mail.

**Comments:**

Re: U.S. Patent Application Serial No. 09/747,602  
For VIVA  
By: Kent GILSON  
Our reference no: 40433-20002.00

**Attached for your information is a copy of the Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete NonProvisional Application, and copies of the supporting Declarations (without exhibits) for the application referenced above.**

**This Petition was filed with the U.S. Patent and Trademark Office on May 4, 2001. Please provide us with the status of the Petition at your earliest convenience.**

Respectfully submitted,

Stephen C. Durant  
Reg. No. 31,506

40433-20002.00

JUL 6 2001 2:11PM

MOFO 28TH FL

NO. 955 P. 2

# DOCKETING

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

40433-2000 2.00

Attorney Docket: ~~40433000000~~  
Applicant(s): Kent L. GILSON  
Title: VIVA

Mailing Date: May 4 2001  
USPN: 09/747,602  
Filing Date: December 22, 2000

Papers enclosed:

- ☒ Transmittal Letter - 2 Pages
- ☒ Copy of Incomplete Nonprovisional Application Under 37 C.F.R. §1.53(b) - 2 Pages
- ☒ Fee Transmittal - 1 Page
- ☒ Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete Nonprovisional Appln. - 4 Pages
- ☒ Declaration of Stephen C. Durant in Support of Petition & Exhibits 1-2 - 5 Pages
- ☒ Declaration of Donalyn Pryor in Support of Petition - 3 Pages
- ☒ Declaration of Charmayne Wilson in Support of Petition - 3 Pages
- ☒ Declaration of Utility Patent Application (signed) - 2 Pages
- ☒ Copy of Return Receipt Postcard Submitted in the Appln.
- ☒ Copy of Express Mail Receipt Submitted in the Appln. - 1 Page
- ☒ Copy of Check Submitted in the Appln. - 1 Page
- ☒ Copy of Transmittal Letter Submitted in the Appln. - 2 Pages
- ☒ Copy of Specification in the Above-Referenced Patent Appln. - 144 Pages
- ☒ Authorization to charge deposit Account in the amount of \$195.00 (\$130.00 petition fee and \$65.00 surcharge)
- ☒ This Return Receipt Postcard

SCD2/cxw3  
sf-1084308

RECEIVED BY THE U.S. PATENT AND TRADEMARK OFFICE

FIXED FEE ENTERED 347

By GAR  
Date 5/16/01

DOCKETED GAR

**CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on May 7, 2001.

*C. Wilson*  
C. Wilson

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

**TRANSMITTAL LETTER FOR PETITION UNDER 37 CFR 1.53(e)  
TO SHOW RECEIPT OF ITEM IN RESPONSE TO NOTICE OF  
INCOMPLETE NONPROVISIONAL APPLICATION**

**BOX MISSING PARTS**  
Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In complete response to the Notice of Incomplete Nonprovisional Application  
Under 37 C.F.R. § 1.53(b) dated March 7, 2001, attached please find:

- ☒ Fee Transmittal for 2001 (1 page);
- ☒ Copy of Notice of Incomplete Nonprovisional Application sent to Applicant in the above-referenced patent application on March 7, 2001 (2 pages);
- ☒ Declaration signed by the inventor (2 pages);
- ☒ Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete Nonprovisional Application (4 pages);

Attorney

et No. 404332000200

- ☒ Declaration of Stephen C. Durant in Support of Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete Nonprovisional Application and accompanying Exhibit 1 (copy of Express Mail Receipt for USSN 09/747,602), and Exhibit 2 (copy of Express Mail Receipt for U.S. Provisional No. 60/258,112); (5 pages);
- ☒ Declaration of Donalyn Pryor in Support of Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete Nonprovisional Application (3 pages);
- ☒ Declaration of Charmayne Wilson in Support of Petition Under 37 CFR 1.53(e) to Show Receipt of Item in Response to Notice of Incomplete Nonprovisional Application (3 pages);
- ☒ Copy of Postcard dated December 22, 2000, copy of Returned Express Mail Receipt dated December 22, 2001, copy of Check No. 5112300, copy of Utility Patent Application Transmittal, and Specification (148 pages);
- ☒ Return Receipt Postcard.
- ☒ The Assistant Commissioner is hereby authorized to charge \$195.00 (\$130.00 petition fee and \$65.00 surcharge fee) and any additional fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this transmittal and associated documents, or to credit any overpayment to Deposit Account No. 03-1952 referencing docket no. 404332000200.

Dated: May 7, 2001

Respectfully submitted,

By: 

Stephen C. Durant

Registration No. 31,506

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6982  
Facsimile: (415) 268-7522



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20531  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/747,602	12/22/2000	Kent Gilson	404332000200

CONFIRMATION NO. 8247

## FORMALITIES LETTER



\*0000000005834578\*

Stephen C. Durant  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482

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JUL - 6 2001

PETITIONS OFFICE

Date Mailed: 03/07/2001

## NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)).

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(i)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition.

- The specification is missing.
- The specification does not include at least one claim.

The required items noted below **SHOULD** be filed along with any items required above. The filing date of this nonprovisional application will be the date of receipt of the items required above. The items noted below must be filed no later than **TWO MONTHS FROM THE FILING DATE ACCORDED THIS APPLICATION**.

- The oath or declaration is unsigned.

*A copy of this notice **MUST** be returned with the reply.*

  
Customer Service Center  
Initial Patent Examination Division (703) 308-1202

JUL. 6. 2001 2:12PM

MOFO 28TH FL

NO. 955

P. 6  
Page 2 of 2

**PART 2 - COPY TO BE RETURNED WITH RESPONSE**

# FEE TRANSMITTAL FOR FY 2001

Patent fees are subject to annual revision.

U.S. Patent & Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Information unless it displays a valid OMB control number.

## Complete if Known

Application Number 09747,602  
Filing Date December 22, 2000  
First Named Inventor Kent L. GILSON  
Examiner Name To Be Assigned  
Group An Unit To Be Assigned  
Attorney Docket No. 404332000200

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

TOTAL AMOUNT OF PAYMENT

(\$195.00)

## METHOD OF PAYMENT

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number 03-1952

Deposit Account Name Morrison & Foerster LLP

- ☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17  
☒ Applicant claims small entity status. See 37 CFR 1.27

2. ☐ Payment Enclosed:

☐ Check ☐ Credit Card ☐ Money Order ☐ Other

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
101	710	201	355	Utility filing fee	
108	320	206	160	Design filing fee	
107	490	207	245	Plant filing fee	
108	710	208	355	Reissue filing fee	
114	150	214	75	Provisional filing fee	

SUBTOTAL (1)

### 2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
20	- 20 =	0	\$0.00
Independent Claims	3	- 3 =	0
Multiple Dependent			\$0.00

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claims, if not paid
106	80	206	40	Reissue independent claims over original patent
110	18	210	9	Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

\*\* or number previously paid, if greater; For reissues, see above.

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	\$ 65.00
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	390	216	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,240	241	620	Petition to revive - unintentional	
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	600	244	300	Plant issue fee	
122	130	122	130	Petitions of the Commissioner	\$130.00
123	50	123	50	Petitions related to provisional applications	
128	180	128	180	Submission of Information Disclosure Sheet	
581	40	581	40	Recording each patent assignment per properties (times number of properties)	
148	710	248	355	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	710	249	355	For each additional invention to be examined (37 CFR § 1.129(b))	
179	710	279	355	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

\$195.00

SUBTOTAL (3)

(\$195.00)

## SUBMITTED BY

Name (Print/Type)

Stephen C. Durant

Signature

*Stephen C. Durant*

Registration No. (Attorney/Agent)

31,508

Complete (if applicable)

Telephone

(415) 288-7000

Date

May 7, 2001

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2035.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual office. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

sf-1096537



Attorney Docket No. 404332000200

**CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on May 4, 2001.

  
C. Wilson**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

**PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir or Madam:

The attached Notice of Incomplete Nonprovisional Application was mailed to Applicant in the above-captioned patent application on March 7, 2001. The Notice provides that the specification and the specification with at least one claim was omitted when the above-captioned patent application was filed in the U.S. Patent and Trademark Office.

With this petition, Applicant respectfully asserts that a specification with at least one claim, which is enclosed, was included with the application on pages 1-143, including two pages which were both labeled page 85, when filed in the U.S. Patent and Trademark Office on December 22, 2000. In addition, 99 pages of drawings were included with the application. Therefore, Applicant respectfully requests that the entire specification on pages 1-143, including two pages labeled page 85 be afforded a filing

Attorney Docket No. 404332000200

date of December 22, 2000, along with the 99 pages of drawings. Under Section 503 of the Manual of Patent Examining Procedure (MPEP), a returned, un-annotated postcard is prima-facie evidence that all the items properly identified and itemized on the postcard were received by the Patent and Trademark office on the date stamped on the postcard (Office Date stamp).

Enclosed is a photocopy of the postcard filed with the application which itemizes and properly identifies the components filed with the application. Specifically, the postcard identifies a specification and one page of claims and there is no annotation on the postcard noting that these items were not received. Also, the postcard bears an Office Date stamp showing that the application papers were filed on December 22, 2000. Thus, the returned, un-annotated postcard provides prima-facie evidence of receipt in the Patent and Trademark Office of the specification with at least one claim of the above-captioned application.

Further, the Express Mail receipt (copy enclosed) indicates that the weight of the package was indicated as 2 lbs. 9 ounces. The complete patent application that is in our file weighs approximately the same amount. The weight of the application without the specification on page 1-85 is only 1 lb. and 15 ounces. (See declaration of Charmayne Wilson). Therefore, this indicates that the package that was mailed contained the entire specification on pages 1-143 the 99 pages of drawings.

In addition, a new Provisional Patent Application with identical contents absent one claim was filed on the same day. The Express Mail Receipt for this Express Mail envelope notes the weight as 2 lbs. 10 ounces. A copy of the file history for this application (Serial No. 60/258,112 contains pages 1-85 of the specification (see Declaration of Charmayne Wilson). The weight of the two packages sent was approximately the same, serving as further evidence that the non-provisional application sent contained a specification.

As further proof of receipt in the Patent and Trademark Office of the specification with at least one claim, Applicant's legal representative, Morrison & Foerster, LLP, has a standard procedure which is followed when filing a new patent application. Specifically,

Attorney Docket No. 404332000200

Applicant's legal representative makes an exact photocopy of the application as filed just prior to placing the application in an Express Mail envelope and forwarding the envelope to the PTO. The photocopy of the application is then filed in the center section of a tri-fold file which is marked with client identification information.

As attested to in the attached Declarations of Stephen C. Durant, Donalyn Pryor and Charmayne Wilson in support of this petition, all of whom prepared and filed the application in the present case, this procedure was followed in the filing of the present application. Specifically, Charmayne Wilson declares that she generated an original copy of the specification, produced an exact photocopy thereof, and placed the photocopy in the center section of a tri-fold file folder marked with client identification information. Specifically, Donalyn Pryor declares that she placed the original specification in an Express Mail envelope addressed to the Assistant Commissioner of Patents. Additionally, Stephen C. Durant declares that he accepted this envelope from Donalyn Pryor and deposited it with the U.S. Postal Service on December 22, 2000.

Further, as attested to in the attached declaration of Stephen C. Durant in support of this petition, the tri-fold file used by Applicant's representative in this case contains includes a specification on pages labeled 1 to 143, with two pages labeled page 85, and one page of claims on the page labeled 143.

Finally, after placing the photocopy of the application in the center section of the tri-fold file folder, the photocopy of the application was not removed therefrom or otherwise tampered with by Donalyn Pryor and Charmayne Wilson, or Stephen C. Durant from the time the application was filed to the time that Stephen C. Durant checked the photocopy of the application for the presence of the specification with at least one claim, and, these are the only three people employed by Applicants representatives who have had any connection with the filing of the present application. Thus, there is no reason for any other person to have tampered in any way with the photocopy of the application or the tri-fold file folder in general.

In sum, the photocopy of the application in the tri-fold file folder is an exact photocopy of the specification sent to the PTO. Further, the photocopy contains a specification with at least one claim. Finally, the photocopy of the application was not

Attorney Docket No. 404332000200

tampered with in any way between the time that it was placed in the tri-fold file folder and the time it was checked for completeness. Accordingly, the complete application, including the specification with at least one claim, must have been included in the envelope to the PTO.

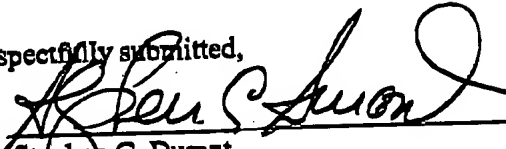
As explained above, and as shown by the enclosed documents, Applicant respectfully asserts that the specification with at least one claim was mailed to the patent trademark office on December 22, 2000. Thus, Applicant respectfully requests that the entire specification, labeled pages 1-143 with two pages labeled 85, be accorded a filing date of December 22, 2000.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404432000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

Respectfully submitted,

By:

  
Stephen C. Durant  
Registration No. 31,506

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6982  
Facsimile: (415) 268-7522

Attorney Docket No. 404332000200

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

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JUL - 6 2001

PETITIONS OFFICE

**DECLARATION OF DONALYN PRYOR IN SUPPORT  
OF PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**Commissioner for Patents  
Washington, D.C. 20231

Dear Sir or Madam:

I, Donalyn Pryor, hereby declare that:

I am employed by the law firm of Morrison & Foerster, LLP, having offices at 425 Market Street, San Francisco, CA 94105 (Morrison & Foerster). Morrison & Foerster is Applicant's legal representatives in the above-captioned matter. I work assisting Stephen C. Durant, the prosecuting attorney of record in the above-captioned matter. I also work with Charmayne Wilson, another employee of Morrison & Foerster, LLP who assists Stephen C. Durant.

Prior to filing any patent application in the United States Patent and Trademark Office (PTO), it is the policy and procedure of Morrison & Foerster to print out a complete copy of the specification of a patent application, make an exact photocopy of the complete original specification, along with any drawings and other formal papers, and

Attorney Docket No. 404332000200

file the photocopy in the center section of a tri-fold file folder marked with client identification information. The original specification, along with any drawings and other formal papers, is then placed in an Express Mail envelope the envelope is sealed, and the application is deposited with the U.S. postal service by the person named on, and signing, the Certificate of Express Mailing included with the patent application.

I consistently follow this procedure when preparing and filing United States patent applications.

I followed this procedure on December 22, 2000 when preparing and filing the above-captioned patent application. Specifically, I received the original specification, along with the drawings and other formal papers from Charmayne Wilson. I placed the original specification, along with the drawings, a return receipt post card, and transmittal letter, in an express mail envelope addressed to the Assistant Commissioner of Patents at the PTO. I then provided this envelope to Stephen C. Durant, identifying it as the above-captioned patent application.

Since filing the photocopy of the application in the center section of the tri-fold file folder, I have not removed the photocopy of the application therefrom or otherwise tampered with or added any pages to the photocopy of the application. Additionally, Charmayne Wilson and I have had primary responsibility for the tri-fold file folder from the time the application was filed. To the best of my knowledge, the tri-fold file folder has remained in the offices of Morrison & Foerster since the time the application was filed.

Also, on December 22, 2000, I prepared a new Provisional Patent Application with identical contents absent one claim. The Express Mail Receipt for this Express Mail envelope notes the weight as 2 lbs. 10 ounces.

I further declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404332000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

By:

Donalyn Pryor  
Donalyn Pryor

Attorney l et No. 404332000200

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

**DECLARATION OF STEPHEN C. DURANT IN SUPPORT  
OF PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**Commissioner for Patents  
Washington, D.C. 20231

Dear Sir or Madam:

I, Stephen Durant, declare that:

I am a partner with the law firm of Morrison & Foerster, LLP., having offices at 425 Market Street, San Francisco, CA 94105 (Morrison & Foerster). Morrison & Foerster is Applicant's legal representative in the above-captioned matter.

On December 22, 2000, I accepted an Express Mail envelope from Charmayne Wilson, my patent assistant, which was identified as containing the above-identified patent application. Also on December 22, 2000, I deposited this same envelope with the U.S. Postal Service. I witnessed the Postal Clerk weigh the envelope and complete the Express Mail Receipt noting the weight as 2 lbs. 9 ounces, copy attached as Exhibit 1. Also, on December 22, 2000, I witnessed the Postal Clerk weigh the Express Mail



Attorney : set No. 404332000200

envelope for U.S. Provisional Application Serial No. 60/258,112 Express Mail Receipt noting the weight as 2 lbs. 10 ounces, copy attached as Exhibit 2.

I am aware that Charmayne Wilson, my patent assistant, prepared a photocopy of the present patent application as filed and attached it to the center section of a tri-fold file folder marked with client identification information. I have reviewed the photocopy of the above-referenced patent application attached to the center section of a tri-fold file folder marked with client identifying information and retained by Morrison and Foerster. Prior to my review of the photocopy of the application for purposes of making this declaration, I did not handle in any way the tri-fold file folder or photocopy of the application attached thereto.

The photocopy of the specification of the patent application includes a specification on pages 1 to 143, with two pages labeled page 85, and a page of claims on the page labeled 143.

Charmayne Wilson, Donalyn Pryor and myself are the only people employed by Morrison & Foerster who were involved with the preparation and filing of the present application. I know of no reason why any other person employed by Morrison & Foerster would have handled the photocopy of the patent application in the tri-fold file folder.

I further declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Attorney . ket No. 404332000200

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404332000200.

However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

Respectfully submitted,

By: 

Stephen C. Durant  
Registration No. 31,506

Morrison & Foerster LLP  
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Attorney Docket No. 404332000200

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

FAX RECEIVED

JUL - 6 2001

PETITIONS OFFICE

**DECLARATION OF CHARMAYNE WILSON IN SUPPORT  
OF PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**Commissioner for Patents  
Washington, D.C. 20231

Dear Sir or Madam:

I, Charmayne Wilson, hereby declare that:

I am employed by the law firm of Morrison & Foerster, LLP, having offices at 425 Market Street, San Francisco, CA 94105 (Morrison & Foerster). Morrison & Foerster is Applicant's legal representatives in the above-captioned matter. I work assisting Stephen C. Durant, the prosecuting attorney of record in the above-captioned matter. I also work with Donalyn Pryor, another employee of Morrison & Foerster, LLP who assists Stephen C. Durant.

Prior to filing any patent application in the United States Patent and Trademark Office (PTO), it is the policy and procedure of Morrison & Foerster to print out a complete copy of the specification of a patent application, make an exact photocopy of the complete original specification, along with any drawings and other formal papers, and

Attorney Docket No. 404332000200

file the photocopy in the center section of a tri-fold file folder marked with client identification information. The original specification, along with any drawings and other formal papers, is then placed in an Express Mail envelope the envelope is sealed, and the application is deposited with the U.S. postal service by the person named on, and signing, the Certificate of Express Mailing included with the patent application.

I consistently follow this procedure when preparing and filing United States patent applications.

I followed this procedure on December 22, 2000 when preparing and filing the above-captioned patent application. Specifically, I printed out an original copy of the specification, I photocopied the application, including the specification and drawings, and placed the photocopy of the application in the center section of a tri-fold file folder marked with client identification information. I then handed the original specification, along with the drawings, and other formal documents to Donalyn Pryor.

Also, on December 22, 2000, I prepared a new Provisional Patent Application with identical contents absent one claim. The Express Mail Receipt for this Express Mail envelope notes the weight as 2 lbs. 10 ounces. I obtained a copy of the file history for this provisional patent application (Serial No. 60/258,112), and it contains a specification of pages 1-85.

Since filing the photocopy of the application in the center section of the tri-fold file folder, I have not removed the photocopy of the application therefrom or otherwise tampered with or added any pages to the photocopy of the application. However, I since then removed the patent application that was in our patent file to determine the weight of the application as approximately 2 lbs. 13.6 ounces. In addition, I weighed the application without pages 1-85 of the specification, and the weight was 1 lb. and 15 ounces.

Additionally, Donalyn Pryor and I have had primary responsibility for the tri-fold file folder from the time the application was filed. To the best of my knowledge, the tri-

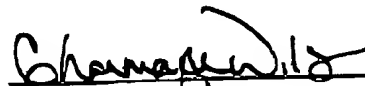
fold file folder has remained in the offices of Morrison & Foerster since the time the application was filed.

I further declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404332000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001

By:

  
Charmayne Wilson

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Kent L. GILSON

Serial No.: 09/747,602

Filing Date: December 22, 2000

For: VIVA

Group Art Unit: To Be Assigned

Examiner: To Be Assigned

**DECLARATION OF DONALYN PRYOR IN SUPPORT  
OF PETITION UNDER 37 CFR 1.53(e) TO SHOW RECEIPT OF ITEM  
IN RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL  
APPLICATION**Commissioner for Patents  
Washington, D.C. 20231

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Dear Sir or Madam:

PETITIONS OFFICE

I, Donalyn Pryor, hereby declare that:

I am employed by the law firm of Morrison & Foerster, LLP, having offices at 425 Market Street, San Francisco, CA 94105 (Morrison & Foerster). Morrison & Foerster is Applicant's legal representatives in the above-captioned matter. I work assisting Stephen C. Durant, the prosecuting attorney of record in the above-captioned matter. I also work with Charmayne Wilson, another employee of Morrison & Foerster, LLP who assists Stephen C. Durant.

Prior to filing any patent application in the United States Patent and Trademark Office (PTO), it is the policy and procedure of Morrison & Foerster to print out a complete copy of the specification of a patent application, make an exact photocopy of the complete original specification, along with any drawings and other formal papers, and

file the photocopy in the center section of a tri-fold file folder marked with client identification information. The original specification, along with any drawings and other formal papers, is then placed in an Express Mail envelope the envelope is sealed, and the application is deposited with the U.S. postal service by the person named on, and signing, the Certificate of Express Mailing included with the patent application.

I consistently follow this procedure when preparing and filing United States patent applications.

I followed this procedure on December 22, 2000 when preparing and filing the above-captioned patent application. Specifically, I received the original specification, along with the drawings and other formal papers from Charmayne Wilson. I placed the original specification, along with the drawings, a return receipt post card, and transmittal letter, in an express mail envelope addressed to the Assistant Commissioner of Patents at the PTO. I then provided this envelope to Stephen C. Durant, identifying it as the above-captioned patent application.

Since filing the photocopy of the application in the center section of the tri-fold file folder, I have not removed the photocopy of the application therefrom or otherwise tampered with or added any pages to the photocopy of the application. Additionally, Charmayne Wilson and I have had primary responsibility for the tri-fold file folder from the time the application was filed. To the best of my knowledge, the tri-fold file folder has remained in the offices of Morrison & Foerster since the time the application was filed.

Also, on December 22, 2000, I prepared a new Provisional Patent Application with identical contents absent one claim. The Express Mail Receipt for this Express Mail envelope notes the weight as 2 lbs. 10 ounces.

I further declare under penalty of perjury under the laws of the United States of America that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

Attorney Docket No. 404332000200

statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 404332000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 7, 2001By: 

Donalyn Pryor